faction supported secretly from Canada whose immediate object is to overthrow the present and restore the former government, at other times we are told that it is a mere contest for power between Bowdoin and Hancock and that the Hancock faction are aiming at the destruction of all public securities and the subversion of all public faith. Whatever may be the cause of these dissentions or however they may terminate, in their present operation they deeply affect the happiness and reputation of the United States. They will, however, I presume tend to people the western world if you can govern yourselves so wisely as to present a safe retreat to the weaker party. These violent, I fear bloody, dissentions in a state I had thought inferior in wisdom and virtue to no one in the union, added to the strong tendency which the politics of many eminent characters among ourselves have to promote private and public dishonesty cast a deep shade over that bright prospect which the revolution in America and the establishment of our free governments had opened to the votaries of liberty throughout the globe. I fear, and there is no opinion more degrading to the dignity of man, that these have truth on their side who say that man is incapable of overning himself. I fear we may live to see another revolution.

I am dear sir, with high esteem and respect,

Your obed't serv't.

JOHN MARSHALL

5. *Gilman v. McClary: a New Hampshire Case of 1791*

PLUMER in his *Life of William Plumer* (pp. 170–172) refers to a New Hampshire case of 1791 in which an act of the legislature was declared unconstitutional but says: "Beyond a brief notice of it in my father's papers, I am not aware that any report of the case is to be found." A brief record of the decision in this case has been found among the records of the Superior Court of Judicature, for Rockingham County, at Exeter, N. H.

During the Revolution trials by the legislature were frequent in New Hampshire. This practice was continued after the adoption of the Constitution of 1784, and the General Assembly ("General Court") assumed for a time the position of a court of appeal. Legislative interference in judicial matters usually assumed the form of a special act "restoring the party to his law", *i. e.*, granting him a new trial in the Superior Court.

In 1789 Nathaniel Gilman sued Elizabeth McClary for a certain sum of money alleged to be due to him. Upon agreement of the parties the matter was submitted to referees, who decided against Elizabeth McClary, and the Superior Court entered judgment against her. The following extracts from the House and Senate

journals of New Hampshire and the decision of the Superior Court give the further history of the case.

WALTER F. DODD.

Voted that M^r^ Warner, M^r^ Dole and M^r^ Gibson with such of the Honb^l^ Senate as they may join be a Committee to consider of the Petition of Elisabeth M'Clary and report thereon. (Journal of the House of Representatives, June 10, 1790. *N. H. State Papers,* XXII. 59.)

A Vote for a committee to join a committee of the Senate to consider of the petition of Elizabeth M'Clary, and report thereon. Was brought up, read and concurred: M^r^ Webster joined. (Senate Journal, June 11, 1790. *Ibid.,* 15.)

The Committee on the Petition of Elisabeth McClarey reported that the Petitioner be heard thereon before the General Court on some day in the next Session—On reading said report Motion was made to accept the Same on which motion the yeas and nays were called and are as follows viz. . . . 33 yeas—19 nays—so it was Accepted.

Whereupon *voted* that the Petitioner be heard thereon before the General Court on the Second Friday of the next Session and that in the mean time the Petitioner cause that Nathanael Gilman the Petitionee be served with a Copy of the Petition and order of Court thereon three weeks prior to the Sitting of said court that he may then appear and Shew cause why the prayer thereof may not be granted and that the Execution against the Petitioner be stayed until the decision of the General Court. (Journal of the House of Representatives, June 14, 1790. *Ibid.,* 67–68.)

A Vote to hear the petition of Elizabeth M'Clary on the second Friday of their next Session, and that she cause N. Gilman of Newmarket [to be served] with a Copy of the petition etc. etc. was brought up, read and concurred. (Senate Journal, June 16, 1790. *Ibid., 22.*)

Upon hearing and considering the Petition of Elisabeth McClarey *voted* that the prayer thereof be granted and that the Petitioner have leave to bring in a Bill accordingly. (Journal of the House of Representatives, January 14, 1791. *Ibid.,* 156.)

A vote granting the prayer of the pet^n^ of Elis^a^ McClary and giving her leave to bring in a bill accordingly was brot up read and concurred. (Senate Journal, January 14, 1791. *Ibid.,* 104.)

An Act to restore Elisabeth McClarey to her Law—was read a third time and passed to be Enacted. (Journal of the House of Representatives, January 21, 1791. *Ibid.,* 168.)

An Act to restore Elisabeth McClary to her law having been read a third time *voted* that the same be enacted. (Senate Journal, January 25, 1791. *Ibid.,* 113.)

Upon motion it was objected by the Counsel for the original plaintiff that the Act of the General Court by virtue of which this action was reentered could not entitle the original defendant to a trial by way of

appeal because if it reversed the judgment the court rendered on the report of referees it was repugnant to the constitution of this State and if it did not reverse the judgment the same might be pleaded in bar on the appeal Whereupon after a full hearing of the parties by their counsel learned in the law and fully deliberating upon the constitution of the State and nature and operation of the act, it appears to the Court that if the act virtually or really reverses the judgment of this Court it is repugnant to the bill of rights and constitution of this State and if the Act does not reverse the said judgment the Court cannot render another judgment in the same case upon appeal while the first judgment remains in full force It is therefore considered by the Court that the said Act is ineffectual and inadmissible and that the said action be dismissed. (Manuscript record, Superior Court for the County of Rockingham, September, 1791.)